IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

CASE NO.

80-6785

JOSEPH ROBERT SPAZIANO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

APPENDIX TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MR. VAN HOOK: I'm asking how the Court would interpret that.

THE COURT: I would agree with you. Rebuttal is rebuttal, it's not a time to bring up a new aspect of the case and argue it without affording you the opportunity to speak to it.

MR. VAN HOOK: You know there are some judges that would say, look, he's here to rebut the whole case.

MR. KIRKLAND: No way.

MR. VAN HOOK: Okay.

(Whereupon, at 2:40 o'clock p.m., the foregoing proceedings were concluded, after which a brief recess was taken.)

(Whereupon, at 3:00 o'clock p.m., court reconvened, after which the following proceedings were had before the Court and counsel for the respective parties, out of the presence of the jury.)

THE COURT: Let the record reflect the jury is out of the courtroom.

Mr. Kirkland, you have announced a statement. Both have now rested and we are now ready for final arguments. We had an in-chambers conference on instructions, and there is one

remaining matter with regard to---

MR. KIRKLAND: Yes, Your Honor. It's rather unusual, Your Honor, because the indictment in this case was returned more than two years from the date of the commission of the offense, Section 932, I think, in the 900's of Florida statutes, states that all offenses other than capital, the prosecution shall be commenced within two years from the date of the offense.

THE COURT: That's Section 932.465.

MR. KIRKLAND: Yes, sir. No prosecution of this case was commenced by the filing of an information or return of an indictment within two years from the date of the offense, so the only crime that the statute of limitations would still permit in this case would be murder in the first degree, a capital offense.

I have discussed that with the Defendant, that is, the waiver of the statute of limitations, which would then permit the Court to instruct the jury that under the charge and the law, the jury could return a verdict of guilty of second-degree murder, a life felony, or third degree murder, a second-degree felony, or manslaughter, a third-degree felony.

THE COURT: I believe that's a second-degree felony, manslaughter.

MR. KIRKLAND: Fifteen years.

THE COURT: Second-degree felony.

MR. KIRKLAND: Yes, sir, both of which the latter, third-degree and manslaughter, are 15-year maximum penalties. I told him that it is up to him to waive that. He has declined to waive. That is, he's willing and insists on the Court not instructing on any lesser included offense.

THE COURT: Mr. Spaziano, do you understand what Mr. Kirkland has just said?

MR. SPAZIANO: Yes, Your Honor.

THE COURT: Is that what you wish to do?

MR. SPAZIANO: Yes, Your Honor.

MR. KIRKLAND: Your Honor, for one further thing, I have instructed Mr. Spaziano that the maximum punishment for first-degree murder is either that by electrocution or life imprisonment -- there was no hope for parole for 25 years -- both of which statutes have been held constitutional by the Supreme Court, the highest court of our state, and that that's not so as to lesser

included offenses.

There are no mandatory jail terms they must serve; even though you should give a life sentence, there's nothing the Court can do. It's all up to the Parole and Probation Commission after the Court's sentence. He understands and I'll have Your Honor confirm it, that if a verdict, he would be subject to a minimum of 25 years on a life sentence, or death by electrocution.

THE COURT: Do you understand that, Mr. Spaziano?

MR. SPAZIANO: Yes, Your Honor.

THE COURT: Do you understand that while the statute of limitations has run on the Court submitting to the jury lesser included verdicts representing the charges of second-degree murder and third-degree murder, manslaughter, that you who has the benefit of the statute of limitations can waive that benefit and, of course -- and then have the Court submit the case to the jury on the first-degree, second-degree, third-degree and manslaughter.

If you don't waive the statute of limitations, then the Court would submit to the jury only on the one charge, the main charge,

which is murder in the first degree, and the sentencing alternatives are as Mr. Kirkland stated them. Do you understand that?

MR. SPAZIANO: Yes, Your Honor.

THE COURT: Are you sure?

MR. SPAZIANO: I understand what I'm waiving. I was brought here on first-degree murder, and I figure if I'm guilty of this, I should be killed.

THE COURT: Mr. Spaziano, it's a matter that the Supreme Court of our state in the past has said that in all prosecutions for first-degree murder, the trial court is obliged to permit the jury to reach verdicts of lesser degrees of homicide by instructing the jury on that because, of course, of the seriousness of the penalty provided for first-degree murder.

And you, of course, have the right under the statute of limitations, it having run against all noncapital offenses, not to have the jury consider that. But it also might be, of course, of benefit to you to have the jury consider it. It's your decision to make. No one but yourself can make that decision.

MR. SPAZIANO: I've made it. That's my

decision, Your Honor.

THE COURT: Okay. And you wish the matter to be submitted to the jury only on first degree?

MR. SPAZIANO: Yes, Your Honor.

THE COURT: Very well, return the jury.

(Whereupon, at 3:06 o'clock p.m., the jury entered the courtroom, after which the following proceedings were had before the Court, counsel for the respective parties and the jury.)

THE COURT: Ladies and gentlemen of the jury, in your absence -- or, perhaps not in your absence -- but the State has announced the completion of its presentation of the case, of the evidentiary portion of the State's case and has announced it rests its case.

Also, further, in your absence, the defense has announced it also rests its case, and we have now come to the portion of the case that is known as final arguments which the attorneys will have the opportunity to argue their contentions and their positions to you.

The Court would remind you that what is said in final argument is not evidence.